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DK T BK 3:176 PG 61  
DESDOTO COUNTY, MS  
W.E. DAVIS, CH CLERK

This Instrument Prepared  
By and Return To:  
Clayton C. Purdom, Esq.  
6410 Poplar Avenue, Suite 1000  
Memphis, TN 38119  
(901) 522-9000  
N/A  
(MS Bar #102434)

**THIRD MODIFICATION TO THE THIRD AMENDED AND RESTATED  
DEVELOPMENT AND CONSTRUCTION LOAN AGREEMENT**  
(KWI – Oaks LOC)

**Borrower:**

Kemmons Wilson, Inc.  
Colorado Oaks, LLC  
8700 Trail Lake Drive West  
Memphis, TN 38125  
Telephone Number: (901) 346-8800  
N/A

**Lender:**

First Tennessee Bank National Association  
7640 Poplar Avenue  
Suite 300  
Germantown, TN 38138  
Telephone Number: (901) 759-7759  
N/A

**Legal Description or Indexing Instructions:**

BEING A PORTION OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 1  
SOUTH, RANGE 6 WEST, DESOTO COUNTY, MISSISSIPPI

**THIRD MODIFICATION TO THE THIRD AMENDED AND RESTATED  
DEVELOPMENT AND CONSTRUCTION LOAN AGREEMENT**  
(KWI – Oaks LOC)

This Third Modification to the Third Amended and Restated Development and Construction Loan Agreement (this "**Agreement**") is made and entered into as of the 26<sup>th</sup> day of May, 2010, but is effective as of the 15<sup>th</sup> day of March, 2010, by and between FIRST TENNESSEE BANK NATIONAL ASSOCIATION, a national banking association having its principal place of business in Memphis, Tennessee (the "**Bank**"); and KEMMONS WILSON, INC., a Tennessee corporation having its principal place of business in Memphis, Tennessee (the "**Borrower**") and is joined in by Colorado Oaks, LLC, a Colorado limited liability company ("**Colorado Oaks**").

**WITNESSETH:**

WHEREAS, the Borrower is indebted to the Bank in connection with a revolving line of credit acquisition, development and construction loan in the maximum principal amount of \$28,701,544.00 (the "**Loan**") evidenced by that certain Eighth Amended and Restated Revolving Line of Credit Promissory Note dated December 15, 2009 (the "**Note**"); and

WHEREAS, the terms and conditions of the Loan are set forth in that certain Third Amended and Restated Development and Construction Loan Agreement dated December 19, 2008 (as modified, amended and/or restated the "**Loan Agreement**", and collectively with the Note and the any other documents evidencing, securing relating to the Loan, all as modified, amended and/or restated, collectively, the "**Loan Documents**"); and

WHEREAS, Borrower has asked Bank to extend the termination date set forth in the Note and for other accommodations.

NOW, THEREFORE, in consideration of the premises, the financial accommodations afforded to the Borrower, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed, and the Loan Documents are hereby modified, as follows:

1. **Recitals.** The recitals set forth above are adopted herein as true and correct statements of fact. All defined terms not defined herein shall have the meanings assigned to such terms in the Loan Agreement.
2. **Termination Date.** The Termination Date or maturity date as set forth in the Loan Documents is hereby modified to mean June 15, 2010.
3. **Deed of Trust.** This Agreement specifically modifies the deed of trust recorded as in Book 2481, Page 27 in the Chancery Clerk's Office of DeSoto County, Mississippi, which creates a lien on the real property described in Exhibit A attached hereto and incorporated herein by reference.

4. **Representations and Warranties.** To induce Bank to enter into this Agreement, Borrower and Colorado Oaks do hereby absolutely and unconditionally certify, represent and warrant to Bank, and covenant and agree with Bank that:
- a. All representations and warranties made by Borrower and Colorado Oaks in the Loan Documents are true, correct and complete in all material respects as of the date of this Agreement.
  - b. As of the date hereof, there are no existing events, circumstances or conditions which constitute, or would, with the giving of notice, lapse of time, or both, constitute Events of Default as defined in the Loan Agreement or in any of the Loan Documents.
  - c. There are no existing offsets, defenses or counterclaims to the obligations of Borrower or Colorado Oaks as set forth in the Loan Documents.
  - d. Borrower nor Colorado Oaks have any existing claim for damages against Bank arising out of or related to the Loan, and, if and to the extent (if any) that Borrower or Colorado Oaks have or may have any such existing claim (whether known or unknown), Borrower and Colorado Oaks do hereby forever release and discharge, in all respects, Bank with respect to such claim.
  - e. The Loan Documents are valid, genuine, enforceable in accordance with their respective terms, and in full force and effect.
  - f. Borrower hereby certifies that it's full and complete name is KEMMONS WILSON, INC., and that the state of its formation is Tennessee.
  - g. Borrower has provided to Bank its Charter, Bylaws or Articles of Incorporation and all amendments and modifications thereto.
  - h. Colorado Oaks hereby certifies that it's full and complete name is COLORADO OAKS, LLC, and that the state of its formation is Colorado.
  - i. Colorado Oaks has provided to Bank its operating agreement or articles of organization and all amendments and modifications thereto.
  - j. Borrower and Colorado Oaks have good and valid certificates of insurance evidencing policies of insurance reasonably required by Bank, all issued by companies reasonably acceptable to Bank, and in form, content and amenities reasonably acceptable to Bank and each such policy names Bank as loss payee or additional insured, as applicable and as its interests may appear.
  - k. Borrower and Colorado Oaks each have good and valid record, legal and equitable title to the collateral each pledged to Bank, free and clear of any lien, contract for sale, option to purchase, right of first offer or refusal, or other restriction of any kind whatsoever.

- l. Borrower warrants and represents that it has the power and authority to enter into this Agreement and that all formal requirements necessary or required in order for such party to enter into this Agreement have been complied with fully.
  - m. Colorado Oaks Borrower warrants and represents that it has the power and authority to enter into this Agreement and that all formal requirements necessary or required in order for such party to enter into this Agreement have been complied with fully.
5. **Ratification.** All other terms, covenants and conditions contained in the Loan Documents are hereby ratified and shall continue in full force and effect, except as expressly modified hereby. Except as modified herein, nothing in this Agreement shall adversely affect, invalidate, impair, or release any covenant, condition, agreement, or stipulation contained in the Loan Documents. All acts of Bank heretofore are hereby ratified and accepted.
  6. **Counterpart Execution.** This Agreement may be executed in multiple or separate counterparts, each of which shall constitute an original, and together all of such counterparts shall constitute a single binding instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the date first above written.

**[SIGNATURE AND ACKNOWLEDGMENT PAGE FOLLOWS]**

**THIRD MODIFICATION TO THE THIRD AMENDED AND RESTATED  
DEVELOPMENT AND CONSTRUCTION LOAN AGREEMENT**  
(KWI – Oaks LOC)

**SIGNATURE AND ACKNOWLEDGMENT PAGE**

FIRST TENNESSEE BANK NATIONAL  
ASSOCIATION

By: Mark R

Name: Stephen Dumas

Title: VP

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public in the state and county aforesaid, personally appeared Stephen Dumas, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, under oath, acknowledged (herself)himself to be the Vice President of FIRST TENNESSEE BANK NATIONAL ASSOCIATION, the within named bargainor, a national banking association, and that (she)he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by personally signing the name of the corporation by (herself)himself as such officer.

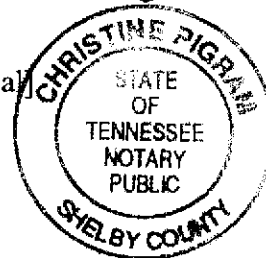
WITNESS my hand and official seal at office this 26th day of Nov, 2010.

Christine Pigran  
NOTARY PUBLIC

My commission expires:

11/7/2012

[affix seal]



My Comm. Exp. 11-7-2012

**THIRD MODIFICATION TO THE THIRD AMENDED AND RESTATED  
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**SIGNATURE AND ACKNOWLEDGMENT PAGE**

KEMMONS WILSON, INC., a Tennessee corporation

By: L. Batt

Name: William Batt

Title: Sr VP

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public in the state and county aforesaid, personally appeared William Batt, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged (herself)himself to be the SVP of KEMMONS WILSON, INC., the within named bargainor, a Tennessee corporation, and that (she)he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by personally signing the name of the corporation by (herself)himself as such officer.

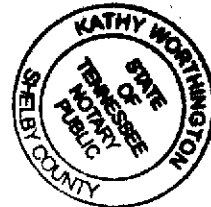
WITNESS my hand and official seal at office this 26th day of May, 2010.

Kathy Worthington  
NOTARY PUBLIC

My commission expires:

[affix seal]

**My Commission Expires April 4, 2012**



**THIRD MODIFICATION TO THE THIRD AMENDED AND RESTATED  
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(KWI – Oaks LOC)

**SIGNATURE AND ACKNOWLEDGMENT PAGE**

COLORADO OAKS, LLC, a Colorado limited liability company

By: L Batt

Name: William Batt

Title: Authorized Officer

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public in the state and county aforesaid, personally appeared William Batt, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged (herself)himself to be the Authorized Officer of COLORADO OAKS, LLC, the within named bargainor, a Colorado limited liability company, and that (she)he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by personally signing the name of the corporation by (herself)himself as such officer.

WITNESS my hand and official seal at office this 26<sup>th</sup> day of May, 2010.

Kathy Worthington  
NOTARY PUBLIC

My commission expires:

My Commission Expires April 4, 2012

[affix seal]



**EXHIBIT "A"****PROPERTY DESCRIPTION (OLIVE BRANCH, MS)**

Lot 1, Phase 1, Parkview Heights P.D. in Section 33, Township 1 South, Range 6 West, City of Olive Branch, DeSoto County, Mississippi as shown by plat appearing of record in Plat Book 98, Page 7, in the office of the Chancery Clerk of DeSoto County, Mississippi, and being more particularly described by metes and bounds as follows:

A PORTION OF THE PARKVIEW HEIGHTS, LLC PROPERTY lying in the northeast quarter of Section 33, Township 1 South, Range 6 West and described in Book 513, Page 100 in the DeSoto County Chancery Office and being more particularly described by metes and bounds as follows:

Commencing at the northeast corner of Section 33, Township 1 South, Range 6 West in Olive Branch, DeSoto County, Mississippi, thence  $S01^{\circ}01'24''E$ , and with the east line of said Section 33, a distance of 1,659.65 feet to a point; thence  $N89^{\circ}57'52''W$ , and with the south line of Center City Drive (84-foot R\W), a distance of 373.03 feet to the northwest corner of Lot 1, City Center Commercial Subdivision, Phase 1 and the true POINT OF BEGINNING; thence  $S00^{\circ}08'32''W$ , and with the west line of said Lot 1, a distance of 266.47 feet to an iron pin (set) in the north line of the Olive Branch Public Library property; thence  $S89^{\circ}39'14''W$ , and with the north line of the library property, a distance of 96.46 feet to an iron pin (set) at the northwest corner of the library; thence  $S00^{\circ}11'53''E$ , and with the west line of the library property, a distance of 210.74 feet to an iron pin (found) in the north line of the Olive Branch Park; thence  $S89^{\circ}38'11''W$ , and with the north line of the park, a distance of 1,755.37 feet to an iron pin (set); thence  $N00^{\circ}19'09''W$ , and with the east line of the Paul Green property (513-98) a distance of 412.92 feet to an iron pin (found); thence  $N48^{\circ}23'56''W$ , and with a northeast line of the Green property, a distance of 155.43 feet to an iron pin (found); thence  $N89^{\circ}58'10''W$ , and with the north line of the Green property, a distance of 311.65 feet to an iron pin (found) in an east line of the park property; thence  $N00^{\circ}16'23''W$ , and with the east line of the park and the east line of Morell Subdivision, a distance of 233.18 feet to an iron pin (set); thence  $N55^{\circ}32'59''E$  a distance of 583.62 feet to a point in the southwest line of City Center Drive; thence with said southwest line and along a curve to the left having a radius of 1,367.00 feet an arc distance of 1,320.30 feet (chord= $S62^{\circ}17'43''E$ -1,269.57 feet) to a point of tangency; thence  $S89^{\circ}57'52''E$ , and with the south line of City Center Road, a distance of 677.74 feet to the POINT OF BEGINNING and containing 29.204 acres.